

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

ANDREW BURTON BAKER,

Petitioner,

File No. 2:13-cv-294

v.

HON. ROBERT HOLMES BELL

DUNCAN MACLAREN,

Respondent.

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**MEMORANDUM OPINION AND ORDER**  
**ADOPTING THE REPORT AND RECOMMENDATION**

On August 7, 2015, United States Magistrate Judge Timothy P. Greeley issued a Report and Recommendation (“R&R”), recommending that Respondent’s motion for summary judgment (ECF No. 13) be granted and that Petitioner Andrew Burton Baker’s 28 U.S.C. § 2254 petition be denied as untimely. (ECF No. 16.) Petitioner filed objections to the R&R on August 21, 2015. (ECF No. 17.)

This Court is required to make a *de novo* review of those portions of a R&R to which specific objections are made, and may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Petitioner does not object to any specific portion of the R&R, or to any of the findings of the Magistrate Judge concerning the timeliness of Petitioner’s action. Moreover, the Court

agrees with the findings and recommendations of the R&R. Thus, the Court will adopt the R&R and dismiss the petition as untimely.

Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a “substantial showing of a denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To satisfy this standard, the petitioner must show that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 483 (2000) (internal quotation marks omitted). The Sixth Circuit Court of Appeals has disapproved the issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). Rather, the district court must “engage in a reasoned assessment of each claim” to determine whether a certificate is warranted. *Id.* at 467.

Upon review, the Court finds that reasonable jurists could not debate that the petition should be denied as untimely.

Accordingly,

**IT IS HEREBY ORDERED** that Petitioner’s objections to the Report and Recommendation of the Magistrate Judge (ECF No. 17) are **DENIED**.

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 16) is **APPROVED** and **ADOPTED** as the opinion of this Court.

**IT IS FURTHER ORDERED** that Respondent's motion for summary judgment (ECF No. 13) is **GRANTED**.

**IT IS FURTHER ORDERED** that Petitioner's 28 U.S.C. § 2254 petition is **DENIED** because it is untimely.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

Dated: September 8, 2015

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE